

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WEALTH TAX REFERENCE No. 80 of 1995****With****WEALTH TAX REFERENCE No. 119 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge
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COMMISSIONER OF WEALTH-TAX - Applicant(s)

Versus

DILHERKUNVERBA C. JADEJA - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,

None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/07/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Smt. Mauna R. Bhatt, learned counsel for the Revenue. The office report shows that the assessee was served, however, nobody appears for the assessee.
2. Income-tax Appellate Tribunal, at the instance of the Revenue, has referred the following questions to this Court for its answer.

W.T.R. No. 80/95:

"1. Whether, the Appellate Tribunal is right in law and on facts in holding that the Bombay property did not belong to the assessee till the estate is administered and the asset is allocated, handed over to the beneficiary under the Will and hence the value of the immovable property could not be included in the total wealth of the assessee?

2. Whether the appellate tribunal is right in law and on facts in holding that life interest of the assessee in Hajoor Palace was eligible for exemption under section 5[1]iv]?"

W.T.R. No. 119/95:

"1. Whether, the Appellate Tribunal is right in law and on facts in holding that the Bombay property did not belong to the assessee till the estate handed over to the beneficiary under the Will and hence the value of immovable property

could not be included in the total wealth of the assessee?

2. Whether the Appellate Tribunal is right in law and on facts in holding that the life interest of the assessee in Rajkot Palace was eligible for exemption u/s. 5 [1][iv]?

3. Whether the Appellate Tribunal is right in law and on facts in deleting the addition made by the WTO in respect of the jewellery which the assessee claimed that the same was misappropriated by Shri Dharmendrasinhji Jhala?"

3. The facts necessary for disposal of the present matters are that, palace was belonging to Late Chandrasinhji D. Jadeja, who had executed a Will in favour of his wife/assessee and granted her life interest in the said property. On commencement of the assessment proceedings, Wealth Tax Officer did not grant any exemption in favour of the assessee holding that life interest was for more than six years. However, on appeal, the Commissioner of Wealth-tax(A) held that since the assessee occupied the residential palace from the very date of death of her husband, life interest in the palace was already available to her on the valuation date and, therefore, the same was includible in her wealth. However, following the decision of Madras High Court in the case of **Commissioner of**

Wealth-tax, Tamil Nadu-V Vs. K. Ramachandra Chettiar, reported in 141 ITR 771, he held that the value of life interest is eligible for exemption under section 5[1][iv] of the Wealth Tax Act.

4. On an appeal by the Revenue, the Tribunal held that the action of the learned Commissioner of Wealth-tax[A], was fully justified. They also observed that from the Will of late Shri Chandrasinhji Jadeja, it was clear that the palace belonged to him in the capacity of "Ruler of the State" and he had bequeathed the same to his wife with a specific observation that "she shall have right to live in the old and new Hajoor palace".
5. The Tribunal further observed that the case of the assessee is squarely covered by ratio of Madras High Court in the case of Commissioner of Wealth Tax reported in 141 ITR 771. The Tribunal accordingly held that action of the learned Commissioner of Wealth-tax Act (Appeals) was in accordance with law.
6. In the matter of **Commissioner of Wealth-tax, Tamil Nadu-V Vs. K. Ramachandra Chettiar, reported in 141 ITR 771**, Madras High Court has observed as under:-

"The expression "assets" is defined in the Wealth-tax Act as including property of every description, both movable and immovable. It is an axiom of property law that property includes

any interest in property. Property, in this sense, may be regarded as a bundle of proprietary interests or rights. Any one of those interests will itself be property, and hence has to be included in the connotation of "assets". A life interest is a fractional interest in property, falling short of the entire interest in it. It is a well-known species of property under many systems of law, ancient and modern."

7. This very judgment has been observed and followed by Kerala High Court in case of **Commissioner of Wealth-tax v. N. Lakshmikutty Amma reported in 180 ITR 289**, wherein the Division Bench of Kerala High Court has observed that since life interest was included in the net wealth of the assessee, the assessee was entitled to claim exemption under section 5[1][iv] of the Wealth Tax Act as the property "belongs to the assessee" within the meaning of section 5[1][iv] of the Act. They also referred to the judgment of the Calcutta High Court in case of **CED vs. Jyotirmoy Rama reported in [1978] 112 ITR 969**. The Calcutta High Court in the matter of **Commissioner of Wealth-tax Vs. Bhaskar Mitter reported in [1993] 202 ITR 612** has again relied upon the very same judgment and came to a conclusion that under section 2[m] of the Act, an asset can be included in the wealth tax assessment if it belongs to the assessee. If

life interest is treated as such an asset belonging to the assessee and included in the assessment, there is no reason why such asset will not be entitled to exemption provided in respect of any such asset.

8. The three High Courts, though differed a little in their reasonings, but came to the very same conclusion that if life interest can be treated as an asset and is includible in the net wealth of the assessee, then, the assessee would be entitled to exemption under section 5[1][iv] of the Wealth-tax Act.
9. After hearing the learned counsel for the Revenue, we are unable to take a different view. Tribunal was absolutely justified in confirming the order passed by the learned Commissioner of Wealth-tax (Appeals) by granting exemption.
10. Questions no.1 and 2 in both the References are common and in view of the above findings, the said questions are answered against the interest of the Revenue.
11. So far as question no.3 in WTR No.119/95 is concerned, from the frame of the said question, it would appear that it is a question relating to the facts. The assessee made submission before the authorities that the jewellery could not be added to the net wealth of the assessee as the same was misappropriated by Dharmendrasinhji Jhala. Whether jewellery was

misappropriated or not would depend upon proof of a fact. If the Tribunal was thoroughly satisfied on basis of the facts and the evidence produced before it that the jewellery was misappropriated by Dharmendrasinhji Jhala, then, it would also be justified in holding that the property which never came in possession of the assessee as it was misappropriated, could not be added to the net wealth. The finding is pure finding of fact and no question of law arises. Third question in WTR No.119/95 is also answered against the Revenue. Both the References are disposed of. No costs.

[R.S. GARG, J.]

[M.R. SHAH, J.]

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